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8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2010-14

12 **LARRY EDWARD MANTH**
13 **2921 Via Alvarado**
Palos Verdes Estates, CA 90274

A C C U S A T I O N

14 **Certified Public Accountant Certificate No.**
15 **CPA 58503**

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
19 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

20 2. On or about March 23, 1991, the California Board of Accountancy issued Certified
21 Public Accountant Certificate Number CPA 58503 to Larry Edward Manth (Respondent). The
22 Certified Public Accountant Certificate, currently inactive, will expire on April 1, 2010, unless
23 renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the California Board of Accountancy (Board),
26 Department of Consumer Affairs, under the authority of Section 5100 of the Business and
27 Professions Code, which provides, in relevant part, that, after notice and hearing, the Board may
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1 revoke, suspend or refuse to renew any permit or certificate granted for unprofessional conduct
2 which includes, but is not limited to, one or any combination of the causes specified therein,
3 including willful violations of the Accountancy Act and willful violations of rules and regulations
4 promulgated by the Board.

5 4. Business and Professions Code¹ Sections 118(b) and 5109 provide in pertinent part
6 that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall
7 not deprive the Board of its authority to investigate, or to institute or continue a disciplinary
8 proceeding against a licensee upon any ground provided by law, or to enter an order suspending
9 or revoking the license or otherwise taking disciplinary action against the licensee on any such
10 ground.

11 **STATUTORY AND REGULATORY PROVISIONS**

12 5. Section 5100 states:

13 "After notice and hearing the board may revoke, suspend, or refuse to renew any
14 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
15 (commencing with Section 5080), or may censure the holder of that permit or certificate for
16 unprofessional conduct that includes, but is not limited to, one or any combination of the
17 following causes:

18 ...

19 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the
20 same or different engagements, for the same or different clients, or any combination of
21 engagements or clients, each resulting in a violation of applicable professional standards that
22 indicate a lack of competency in the practice of public accountancy or in the performance of the
23 bookkeeping operations described in Section 5052."

24 ...

25 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
26 board under the authority granted under this chapter."

27 ¹ All statutory references are to the Business and Professions Code unless otherwise
28 indicated.

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...

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind."

"(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

"(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses."

6. Licensees are required by Title 16, California Code of Regulations, Article 1, Board Rule 5 to comply with all Board rules, including Title 16, California Code of Regulations, Article 9, Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards.

7. Business and Professions Code section 125 provides, in pertinent part, that any licensee is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him, who conspires with a non-licensee to violate any provision of this code.

APPLICABLE PROFESSIONAL STANDARDS

8. Professional standards or standards of practice pertinent² to this Accusation include, without limitation:

A. Title 31, Part 10 of Internal Revenue Service (IRS) Regulations (31 CFR 10)³ including:

(1) Section 10.21 (Knowledge of Client's Omission), provides that:

"[a] practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission."

(2) Section 10.22(a) (Diligence as to Accuracy), provides that, in

² All references herein to standards and other authoritative literature are to the versions in effect at the time the shelters were being developed, marketed or sold.
³ 31 CFR 10 is also referred to as "Circular 230" or Section 10 of the IRS Regulations. Among other things, Circular 230 governs practice by CPAs before the IRS.

1 general, a practitioner must exercise due diligence:

2 “(1) In preparing or assisting in the preparation of, approving, and filing tax
3 returns, documents, affidavits, and other papers relating to Internal Revenue
4 Service matters;

5 (2) In determining the correctness of oral or written representations made by the
6 practitioner to the Department of the Treasury; and

7 (3) In determining the correctness of oral or written representations made by the
8 practitioner to clients with reference to any matter administered by the Internal
9 Revenue Service.”

10 (3) Section 10.30 (Solicitation), provides that a practitioner may not, with
11 respect to any Internal Revenue Service matter, in any way use or participate in the use of any
12 form of public communication or private solicitation containing a false, fraudulent, or coercive
13 statement or claim; or a misleading or deceptive statement or claim.

14 (4) Section 10.34 (Standards for Advising with Respect to Tax Return Positions
15 and for Preparing or Signing Returns), provides that a practitioner may not sign a tax return as a
16 preparer if the practitioner determines that the tax return contains a position that does not have a
17 realistic possibility of being sustained on its merits (the “realistic possibility standard”) unless the
18 position is not frivolous and is adequately disclosed to the Internal Revenue Service.

19 B. American Institute of Certified Public Accountants (AICPA) Code of
20 Professional Conduct, includes Section I - Principles and Section II - Rules. Both the Principles
21 (Articles III and VI) and the Rules are relevant to the allegations herein.

22 (1) Rule 102 (Integrity and Objectivity), provides that:

23 “In the performance of any professional service, a member shall maintain objectivity
24 and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or
25 subordinate his or her judgment to others.”

26 (2) Rule 102.2 (Conflicts of Interest), provides that:

27 “A member shall be considered to have knowingly misrepresented facts in violation of rule
28 102. . . when he or she knowingly—

1 a. Makes, or permits or directs another to make, materially false and
2 misleading entries in an entity's financial statements or records; or

3 b. Fails to correct an entity's financial statements or records that are
4 materially false and misleading when he or she has the authority to record an entry; or

5 c. Signs, or permits or directs another to sign, a document containing
6 materially false and misleading information."

7 (3) Rule 102-4 (Subordination of Judgment by a Member), provides that:

8 "Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts
9 or subordinating his or her judgment when performing professional services. Under this rule, if a
10 member and his or her supervisor have a disagreement or dispute relating to the preparation of
11 financial statements or the recording of transactions, the member should take the following steps
12 to ensure that the situation does not constitute a subordination of judgment:

13 "1. The member should consider whether (a) the entry or the failure to record
14 a transaction in the records, or (b) the financial statement presentation or the nature or omission of
15 disclosure in the financial statements, as proposed by the supervisor, represents the use of an
16 acceptable alternative and does not materially misrepresent the facts. If, after appropriate research
17 or consultation, the member concludes that the matter has authoritative support and/or does not
18 result in a material misrepresentation, the member need do nothing further.

19 2. If the member concludes that the financial statements or records could be
20 materially misstated, the member should make his or her concerns known to the appropriate
21 higher level(s) of management within the organization (for example, the supervisor's immediate
22 superior, senior management, the audit committee or equivalent, the board of directors, the
23 company's owners). The member should consider documenting his or her understanding of the
24 facts, the accounting principles involved, the application of those principles to the facts, and the
25 parties with whom these matters were discussed.

26 3. If, after discussing his or her concerns with the appropriate person(s) in
27 the organization, the member concludes that appropriate action was not taken, he or she should
28 consider his or her continuing relationship with the employer. The member also should consider

1 any responsibility that may exist to communicate to third parties, such as regulatory authorities or
2 the employer's (former employer's) external accountant. In this connection, the member may wish
3 to consult with his or her legal counsel.

4 4. The member should at all times be cognizant of his or her obligations
5 under interpretation 102-3 [ET section 102.04].”

6 (4) Rule 201 (General Standards), provides that:

7 “A member shall comply with the following standards and with any interpretations thereof
8 by bodies designated by Council.

9 A. Professional Competence. Undertake only those professional services that
10 the member or the member's firm can reasonably expect to be completed with professional
11 competence.

12 B. Due Professional Care. Exercise due professional care in the performance
13 of professional services.

14 C. Planning and Supervision. Adequately plan and supervise the performance
15 of professional services.

16 D. Sufficient Relevant Data. Obtain sufficient relevant data to afford a
17 reasonable basis for conclusions or recommendations in relation to any professional services
18 performed.”

19 (5) Rule 202 (Compliance With Standards), provides that:

20 “A member who performs auditing, review, compilation, management consulting, tax, or
21 other professional services shall comply with standards promulgated by bodies designated by
22 Council.”

23 (6) Rule 501 (Discreditable Acts), provides that:

24 “A member shall not commit an act discreditable to the profession.”

25 (7) Rule 501-4 (Negligence in the Preparation of Financial Statements or
26 Records), provides that:

1 "A member shall be considered to have committed an act discreditable to the profession in
2 violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such
3 member—

4 a. Makes, or permits or directs another to make, materially false and
5 misleading entries in the financial statements or records of an entity; or

6 b. Fails to correct an entity's financial statements that are materially
7 false and misleading when the member has the authority to record an entry; or

8 c. Signs, or permits or directs another to sign, a document containing
9 materially false and misleading information."

10 (8) Rule 502 (Advertising and Other Forms of Solicitation), provides that: "A
11 member in public practice shall not seek to obtain clients by advertising or other forms of
12 solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion,
13 over-reaching, or harassing conduct is prohibited."

14 (9) Rule 502-2 (False, Misleading or Deceptive Acts in Advertising or
15 Solicitation), provides that:

16 "Advertising or other forms of solicitation that are false, misleading, or deceptive are not in
17 the public interest and are prohibited. Such activities include those that—

18 1. Create false or unjustified expectations of favorable results.

19 2. Imply the ability to influence any court, tribunal, regulatory agency, or
20 similar body or official.

21 3. Contain a representation that specific professional services in current
22 or future periods will be performed for a stated fee, estimated fee or fee range when it was likely
23 at the time of the representation that such fees would be substantially increased and the
24 prospective client was not advised of that likelihood.

25 4. Contain any other representations that would be likely to cause a
26 reasonable person to misunderstand or be deceived."

1 C. AICPA Statements on Standards for Tax Services⁴, including:

2 (1.) TS Section 100 - Tax Return Positions.

3 (2.) TS Section 600 - Knowledge of Error: Return Preparation.

4 (3.) TS Section 800 - Form and Content of Advice to Tax Payers.

5 D. The Internal Revenue Code, including:

6 “(1) 26 U.S.C. §6111 (Section 6111), which governs the registration of tax
7 shelters.

8 (2) 26 U.S.C. §6112 (Section 6112), which imposes certain obligations on the
9 organizer or seller of a “potentially abusive tax shelter.”

10 **COST RECOVERY**

11 9. Code Section 5107(a) provides, in pertinent part, that the Executive Officer of the
12 Board may request the administrative law judge, as part of the proposed decision in a disciplinary
13 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
14 violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and
15 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the
16 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of
17 costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of
18 investigation and prosecution of the case.

19 **PUBLIC PROTECTION**

20 10. Code Section 5000.1 provides, as follows: “Protection of the public shall be the
21 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
22 and disciplinary functions. Whenever the protection of the public is inconsistent with other
23 interests sought to be promoted, the protection of the public shall be paramount.”

24 **FACTUAL BACKGROUND**

25 11. The subject matter of this Accusation is Respondent's participation in the
26 development, promotion, and implementation of certain tax shelter schemes by himself and other

27 ⁴ The AICPA *Statements on Standards for Tax Services*, are codified as “TS” with section
28 numbers, e.g., TS Section 100.

1 KPMG⁵ personnel, including senior partners and members of top management, which assisted
2 high net worth United States citizens to evade United States individual income taxes on billions of
3 dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax
4 shelters.^{6, 7}

5 12. Respondent joined KPMG LLP⁸ as a partner on or about October 4, 1999 and worked
6 in the Los Angeles Office. Within months of his hire, he began the development of the SC2 tax
7 shelter strategy and, within KPMG, served as the National Development Champion and the
8 National Deployment Champion for that strategy.

9 13. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of
10 Facts attached to the Deferred Prosecution Agreement ("DPA") which KPMG entered with the
11 federal government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the
12 Board, KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached
13 to the DPA (which was incorporated into Accusation AC-2006-28),
14

15 ⁵ At all times relevant to this Accusation, KPMG was a limited liability partnership
16 headquartered in New York, New York, with more than 90 offices nationwide, of which several
17 are in California. Among the California KPMG offices during the time period relevant herein
18 were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and Walnut Creek.
19 KPMG was one of the largest auditing firms in the world, providing audit services to many of the
20 largest corporations in the United States and elsewhere. KPMG also provided tax services to
21 corporate and individual clients, some of whom were very wealthy. These tax services included,
22 but were not limited to, preparing federal and state tax returns, providing tax planning and tax
23 advice, and representing clients, for example, in Internal Revenue Service ("IRS") and Franchise
24 Tax Board ("FTB") audits, and in Tax Court litigation with the IRS.

25 ⁶ The portion of KPMG's tax practice that specialized in providing tax advice to
26 individuals, including wealthy individuals, was known as Personal Financial Planning, or "PFP."
27 The KPMG group focused on designing, marketing, and implementing tax shelters for individual
28 clients was known at different times as CaTS ("Capital Transaction Strategies"), and IS
("Innovative Strategies").

⁷ KPMG personnel also formed alliances, operating agreements, and/or joint ventures with
outside persons, including former partners, employees, and others. KPMG also worked with law
firms/lawyers and with banks and insurance companies in implementing the tax shelter
transactions, including SC2 and SOS transactions. Significant activity and coordination regarding
the design and implementation of the tax shelters took place by California licensees or on behalf
of California taxpayers.

⁸ KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating
several offices in California. KPMG was engaged in providing tax services to corporate and
individual clients and providing audit services to corporate, governmental and other clients. The
Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective
January 18, 2008. It is further referenced in paragraph 13.

1 “through the conduct of certain KPMG tax leaders, partners, and employees, during
2 the period from 1996 through 2002, KPMG assisted high net worth individuals to
3 evade individual income taxes on billions of dollars by developing, promoting, and
4 implementing unregistered and fraudulent tax shelters. A number of KPMG tax
5 partners engaged in conduct that was unlawful and fraudulent...”. (Accusation,
6 Paragraph 57, quoting DPA.)⁹

7 A copy of the DPA agreement and Statement of Facts is attached as Exhibit A and is
8 herein incorporated by reference.

9 14. Respondent was a tax partner at KPMG between 1999 and 2002, the period relevant
10 herein. He participated in the above-described scheme, consisting of:

- 11 A. devising, marketing, and implementing fraudulent tax shelters;
12 B. preparing and causing to be prepared, and filing and causing to be filed tax
13 returns with the IRS that contained the fraudulent tax shelter losses; and
14 C. fraudulently concealing those shelters from the IRS.

15 **SC2 and SOS TAX SHELTERS**

16 15. The fraudulent tax shelter transactions which are the subject matter of this Accusation
17 are SC2 (“Corporation Charitable Contribution Strategy”) and SOS (“Short Option Strategy”).¹⁰

18 16. Respondent was highly involved in the creation and/or approval of the SC2¹¹
19 transaction, was the engagement partner involved in at least 18 SC2 transactions, signed at least
20 12 SC2 opinion letters and performed his own SOS transaction.

21 17. The law in effect from at least in or about August 1997 provided that if a taxpayer
22 claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties,
23 ranging from 20%-40% of the underpayment of tax attributable to the shelter, unless the tax

24 ⁹ See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11
25 of Stipulation AC-2006-28 for detail.

26 ¹⁰ During the relevant time period, KPMG personnel, some of its clients, and others
27 involved in these tax shelter transactions prepared, signed and filed tax returns that falsely and
28 fraudulently claimed many billions of dollars in phony tax losses generated by a variety of
transactions, including SC2 and SOS. A significant proportion of the taxpayers who filed tax
returns with KPMG’s assistance using these shelters, including SC2 and SOS tax shelters were
California taxpayers. Approximately 29% of the transactions were in California and
approximately 38% of KPMG’s fees originated in California.

¹¹ SC2 was directed at individuals who own profitable corporations organized under
Chapter S of the tax code (“S corporations”), which means that the corporation’s income is
attributable directly to the corporate owners and taxable as personal income.

1 benefit was supported by an independent opinion relied on by the taxpayer in good faith that the
2 tax benefit was "more likely than not" to survive IRS challenge.

3 SC2 TAX SHELTER

4 18. SC2 was intended to generate a tax deductible charitable donation for a corporate
5 owner of an S Corporation and, more importantly, to defer and reduce taxation of a substantial
6 portion of income produced by the S corporation, essentially by "allocating" but not actually
7 distributing that income to a tax exempt charity holding the corporation's stock.

8 19. SC2 required a series of complex, orchestrated transactions to obtain the promised tax
9 benefits. Among other measures, these transactions involved the issuance of non-voting stock
10 and warrants, a corporate non-distribution resolution, and a stock redemption agreement; a
11 temporary donation of the non-voting stock to charity; and various steps to "allocate" but not
12 distribute corporate income to the tax exempt charity.

13 20. The IRS listed SC2 as a potentially abusive tax shelter.

14 21. Respondent was highly involved in the SC2 transactions. He was the lead tax
15 professional who shepherded SC2 through the development and approval process all the time
16 knowing that it had significant technical flaws and was a potentially illegal tax shelter. Even
17 when some senior KPMG tax professionals expressed forceful objections to SC2, Respondent
18 urged its approval. SC2 was eventually approved for sale and made its way to market.

19 22. As KPMG's National Deployment Champion, Respondent led the marketing effort
20 for SC2. National Deployment Champions' primary task was to educate KPMG tax professionals
21 about the product and motivate them to sell it. KPMG devoted extensive resources to support and
22 encourage marketing efforts, including maintaining a national marketing office, a tax services
23 marketing center, a cold call center, and powerful software systems.

24 23. KPMG tax professionals' sales tactics regarding SC2 were hardly the work of
25 disinterested tax advisers. These professionals employed such hard-sell tactics as making
26 misleading statements to their clients – claims that SC2 will be sold only to a limited number of
27 people or that it is no longer being sold – in order to "elicit an immediate response from the
28

1 client.” KPMG tax professionals were intent on convincing an uninterested or hesitant client to
2 buy a product that the client would be otherwise unlikely to purchase or use.

3 24. KPMG and its tax personnel and associates marketed and caused to be marketed, and
4 implemented and caused to be implemented the SC2 transactions, and generated and caused to be
5 generated false and fraudulent documentation to support the SC2 transactions. This activity
6 included, but was not limited to, generating KPMG opinion letters (and opinion letters by law
7 firm(s)) that claimed that the purported tax losses generated by the shelters were more likely than
8 not to withstand challenge by the IRS. All of these opinion letters were almost identical. In
9 addition to opinion letters, KPMG advised clients of the existence of insurance policies, that for a
10 “small premium” could guarantee SC2’s promised “tax benefits.”

11 25. The SC2 opinion letters falsely stated that the client would distribute stock certificates
12 to a tax-exempt charitable organization and the client would not be taxed on the distribution. The
13 letters also falsely and elaborately describe a redemption process designed to evade tax
14 consequences on the stock donor, by setting up a transaction intended to conceal a failure of
15 actual and genuine ownership transfer. SC2 transactions did not truly ever pass ownership of the
16 stock to the charity; they acted merely as an assignment of income for a specified period of time
17 to the charitable organization.

18 26. The opinion letters and other documents were misleading in that they were drafted to
19 create the false impression that KPMG, its tax personnel, and others associated with the tax
20 shelter scheme were all independent service providers and advisors, when in truth and in fact
21 KPMG personnel and associates jointly developed and marketed the SC2 shelter. Key KPMG tax
22 professionals, including Respondent, involved with SC2 viewed the strategy as a way to defer and
23 reduce taxes on substantial corporate income that was always intended to be returned to the
24 control of the stock donor.

25 27. At various points during the development of SC2, KPMG tax personnel identified
26 various significant technical defects and risks of SC2, including the ways in which the IRS might
27 successfully challenge the products legal validity, problems with identifying a business purpose to
28 explain the structure of the transaction, problems with establishing the charity’s “beneficial

ownership” of the donated stock, since the stock was provided on the understanding that the charity would sell the stock back to the donor within a specified period of time, and problems involving assignment of income, reliance on tax indifferent parties, and valuation issues. Nevertheless, in or about 2000, the marketing of SC2 by the firm was approved. Likewise, the risks of proceeding with implementation of SC2 in 2000 were discussed. And despite the obviously fraudulent nature of SC2 and the warnings conveyed, KPMG tax personnel, including Respondent, decided to proceed with the issuance of the opinion letters on all of the transactions with the intent that SC2 clients would claim the bogus SC2 “distributions” as charitable contributions on tax returns and later “redeem” the stock certificates with no tax liability. KPMG tax professionals’ implementation efforts on SC2 continued long past the sale of the tax product to a client.

SOS TAX SHELTER

28. SOS¹² opinion letters, and other associated documents, were false and fraudulent in a number of ways well known to KPMG and its associates, including the following:

a. They falsely and misleadingly described SOS as an investment, when in truth and in fact, it was a tax shelter designed and marketed to generate tax losses in order to eliminate income taxes for wealthy clients and garner substantial fees and income for KPMG and others.

b. They falsely claimed that the client would have entered into the option positions independent of the other steps that made up SOS, when in truth and in fact, the clients would not have entered into those positions absent the anticipated tax losses to be generated.

c. They falsely claimed that the option positions were contributed to a partnership or other entity to “diversify” the client’s “investment” when in truth and in fact, the contribution

¹²The SOS shelters were referred to by various names, including Short Option Strategy, Spread Option Strategy, Split Option Strategy, SOS, Binary Option, Digital Option, Gain Mitigator, Loss Generator, COINS, BEST, and FX Transaction (hereinafter “SOS”). The SOS shelters generated at least \$1.9 billion in phony tax losses. KPMG’s gross fees from SOS transactions were at least \$17 million. SOS was marketed and sold from at least in or about 1998 through at least in or about 2002 to at least 165 wealthy individuals.

1 was simply a necessary step in the tax shelter, was executed for the purpose of generating the tax
2 loss, and was not executed to "diversify" any "investment."

3 d. They falsely claimed that the offsetting option positions were entered into for
4 "substantial non-tax business reasons," and were contributed to the partnership or other entity for
5 "substantial non-tax business reasons," when in truth and in fact, the transactions were
6 undertaken in order to generate the phony tax losses SOS purported to generate and not for any
7 "substantial non-tax business reason."

8 29. Respondent performed his own SOS transaction.

9 **FRAUDULENT CONCEALMENT OF TAX SHELTERS**

10 30. In addition to preparing, causing to be prepared, and approving the false and
11 fraudulent documentation relating to and implementing the shelter transactions, Respondent
12 participated in steps taken to fraudulently conceal from the IRS the fraudulent tax shelters, and/or
13 knew or should have known that the steps would have the effect of concealing the shelters from
14 the IRS. The steps taken included, but were not limited to, the following:

- 15 (1) not registering the tax shelters with the IRS as required by law¹³;
- 16 (2) preparing and causing to be prepared tax returns that fraudulently concealed the
17 phony losses from the IRS;
- 18 (3) attempting to conceal from the IRS the tax shelter losses and transactions with
19 sham attorney-client privilege claims.

20 **FAILING TO REGISTER TAX SHELTERS**

21 31. Under the law in effect at all times relevant to this Accusation, an organizer of a tax
22 shelter was required to "register" the shelter by filing a form with the IRS describing the

23
24 ¹³ Under the law in effect at all times relevant to this Accusation, an organizer of a tax
25 shelter was required to "register" the shelter by filing a form with the IRS describing the
26 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities
27 claiming a benefit from the shelter were required to include with their income tax returns a form
28 disclosing that they had participated in a registered tax shelter, and disclosing the assigned
registration number. Notwithstanding these legal requirements, KPMG and its personnel, and
others, caused the entities with which they were associated not to register as required any of the
tax shelters they devised, marketed and implemented, and thereby ensured that registration
numbers would not be included on returns relating to unregistered shelters.

1 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities
2 claiming a benefit from the shelter were required to include with their income tax returns a form
3 disclosing that they had participated in a registered tax shelter, and disclosing the assigned
4 registration number. Notwithstanding these legal requirements, KPMG's tax personnel decided
5 not to register the tax shelters based on a "business decision" that to register the shelters would
6 hamper KPMG's ability to sell them. Respondent knew or should have known of the requirement
7 to register the shelters.

8 **FIRST CAUSE FOR DISCIPLINE**
9 **Fraud in the Practice of Public Accountancy**
10 **[Business and Professions Code § 5100(c)]**

11 32. The matters alleged in paragraphs 11 through 31 are re-alleged as though fully set
12 forth.

13 33. Respondent's license is therefore subject to disciplinary action based on his direct
14 involvement and acquiescence in:

- 15 A. The decision of KPMG not to register the tax shelters as required;
16 B. The preparation and approval of false or fraudulent documentation supporting
17 the implementation of the tax shelters; and/or
18 C. Respondent's explicit and required approval of KPMG's marketing and
19 implementation of the tax shelters including, but not limited to, Respondent's signing of, and his
20 approval of allowing KPMG's personnel to sign, the tax opinions and tax returns containing the
21 fraudulent tax shelters.

22 34. Incorporating by reference the matters alleged in paragraphs 11-31, cause for
23 discipline of Respondent's license for fraud in the practice of public accountancy is established
24 under Code Section 5100(c).

25 **SECOND CAUSE FOR DISCIPLINE**
26 **Dishonesty in the Practice of Public Accountancy**
27 **[Business and Professions Code § 5100(c)]**

28 35. Complainant realleges paragraphs 11 through 31 above. Incorporating those matters
by reference, cause for discipline of Respondent's license for dishonesty in the practice of public

1 accountancy is established under Code Section 5100(c) based upon his dishonest acts, and
2 omissions in the course of his participation, as described above, in SC2 and SOS tax shelters.

3 **THIRD CAUSE FOR DISCIPLINE**
4 **Gross Negligence in the Performance of Public Accountancy**
5 **[Business and Professions Code § 5100(c)]**

6 36. Complainant realleges paragraphs 11 through 31 above. Incorporating those matters
7 by reference, cause for discipline of Respondent's license for gross negligence in the practice of
8 public accountancy is established under Code Section 5100(c) based upon his conduct, which
9 constituted extreme departures from applicable professional standards.

10 **FOURTH CAUSE FOR DISCIPLINE**
11 **Failure to Observe Professional Standards in Performance of Public Accountancy**
12 **[Board Rule 58/ Business and Professions Code § 5100(g)]**

13 37. Complainant realleges paragraphs 11 through 31. Incorporating those matters by
14 reference, cause for discipline of Respondent's license is established in that his failure to comply
15 with professional standards applicable to public accountancy constitutes the willful violation of
16 Board Rule 58, providing cause for discipline of his license under Code Section 5100(g).

17 **FIFTH CAUSE FOR DISCIPLINE**
18 **Conspiracy with Unlicensed Person to Violate Accountancy Act**
19 **[Business and Professions Code §§ 125, 5100]**

20 38. Complainant realleges paragraphs 11 through 31. Incorporating those matters by
21 reference, cause for discipline of Respondent's license is established in that he conspired with
22 unlicensed persons, including lawyers, insurance companies and others, to devise, market, and/or
23 implement the fraudulent tax shelters, in violation of Code section 125. The conduct of
24 Respondent, as alleged, constitutes general unprofessional conduct under Code section 5100.

25 **SIXTH CAUSE FOR DISCIPLINE**
26 **Repeated Negligent Acts in the Performance of Public Accountancy**
27 **[Business and Professions Code § 5100(c)]**

28 39. Complainant realleges paragraphs 11 through 31 above. Incorporating those matters
by reference, cause for discipline of Respondent's license for repeated negligent acts in the
performance of public accountancy is established under Code Section 5100(c) based upon his
conduct, which constituted repeated departures from applicable professional standard.

SEVENTH CAUSE FOR DISCIPLINE
Breach of Fiduciary Responsibility in the Performance of Public Accountancy
[Business and Professions Code § 5100(i)]

40. Complainant realleges paragraphs 11 through 31 above. Incorporating those matters by reference, cause for discipline of Respondent's license for breach of fiduciary responsibility in the performance of public accountancy is established under Code Section 5100(i).

EIGHTH CAUSE FOR DISCIPLINE
Knowing Preparation, Publication, or Dissemination of False, Fraudulent or
Materially Misleading Financial Statements, Reports, or Information
[Business and Professions Code § 5100(j)]

41. Complainant realleges paragraphs 11 through 31 above. Incorporating those matters by reference, cause for discipline of Respondent's license for knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information is established under Code Section 5100(j).

NINTH CAUSE FOR DISCIPLINE
Obtaining Valuable Consideration by False Pretenses
[Business and Professions Code § 5100(k)]

42. Complainant realleges paragraphs 11 through 31 above. Incorporating those matters by reference, cause for discipline of Respondent's license for obtaining valuable consideration by false pretenses is established under Code Section 5100(k).

TENTH CAUSE FOR DISCIPLINE
Violation of Professional Standards
[Board Rule 58/ Business and Professions Code § 5100(g)]

43. Complainant realleges paragraphs 11 through 31 above. Incorporating those matters by reference, cause for discipline of Respondent's license for violation of professional standards is established under Board Rule 58 and Code Section 5100(g) based upon his conduct, including approving and causing to be signed, engagement and opinion letters for clients without independently, diligently or accurately evaluating the specific needs and concerns of the clients, which constitutes willful violation of Board Rule 58, providing cause for discipline of his license under Code section 5100(g).

ELEVENTH CAUSE FOR DISCIPLINE
Filing False Income Tax Return
Fiscal Dishonesty [Bus. and Prof. Code Section 5100(i)]
and
Knowing Preparation and Dissemination
of False and Fraudulent Financial Information
[Bus. and Prof. Code Section 5100(j)]

44. Complainant realleges paragraphs 11 through 31, above, and incorporates them herein by reference as if fully set forth at this point. Additional circumstances follow.

45. From 2000 through 2004, Respondent used SOS tax shelter losses to evade the payment of income taxes due and owing on income he earned from KPMG as a partner and from his tax shelter activities with a law firm.

46. Respondent's conduct as set forth in paragraphs 10 through 31 and 45 above, constitutes fiscal dishonesty, which is unprofessional conduct within the meaning of Code section 5100(i).

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2 **PRAYER**

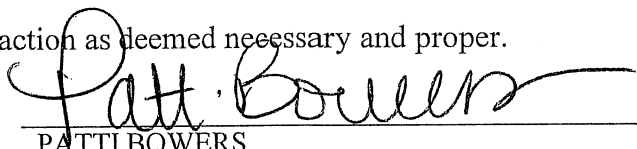
3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the California Board of Accountancy issue a decision:

5 1 Revoking or suspending or otherwise imposing discipline upon Certified Public
6 Accountant Certificate Number CPA 58503, issued to Larry Edward Manth.

7 2 Ordering Larry Edward Manth to pay the California Board of Accountancy the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 5107;

10 3 Taking such other and further action as deemed necessary and proper.

11 DATED: February 9, 2010


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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